

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 15, 2011

The Honorable Ryan Yamane, Chair
The Honorable Dee Morikawa, Vice Chair
House Committee on Health

Re: SB 591 SD2 – Relating to Pharmacy Benefit Management Companies

Dear Chair Yamane, Vice Chair Morikawa and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 591 SD2 which would regulate pharmacy benefit management companies (PBMs) in Hawaii. HMSA opposes this measure. This Bill restricts the use of out-of-state and mail order pharmacies. In doing so, it will increase the cost of pharmacy benefits without providing a concomitant increase in quality of care.

HMSA's goal in the provision of outpatient pharmacy services is to ensure our members have access to affordable, high quality medication. HMSA believes that optimal drug therapy results in positive medical outcomes, which helps to manage overall health care costs. That being said, we did want to provide you with some of our concerns regarding the current language of SB 591 SD2 including:

- The bill addresses two facets, rebates and audits, out of a multitude of PBM services offered to clients. HMSA provides some pharmacy services directly for our employer groups, while other services are provided through our contracted arrangement with a PBM vendor, Medco. We believe that the language of the bill, as drafted could apply to HMSA
- There is implication that PBMs dictate pharmacy benefits – such as restrictive networks, mandatory mail order and copayments. This is not the case. The employer groups or other payers are the entities which make these benefit design decisions. Regulation of PBMs as outlined in this measure will prohibit health plans from utilizing cost-saving methods
- **Registration of PBMs: Page 6, Lines 5-6**
HMSA provides pharmacy services for the majority of our members. We process 100,000 prescriptions each week, amounting to 1.4 million prescriptions per quarter. Claims are submitted real-time by pharmacies which results in immediate servicing for our members. Our PBM, Medco, is responsible for claims processing functions. If their registration were to be suddenly suspended or revoked, this may lead to immediate problems for many of our members in trying to obtain their prescriptions
- **Audit of Pharmacy Records: (Entire Section beginning on Page 6, Line 8)**
Pharmacy audits are intended to assure our pharmacy providers comply with pharmacy practice laws, as well as identify situations of fraud, waste and abuse. These audits are designed to protect the employer groups and our members. HMSA's current audit program is comprised of a desk-top audit of 100% of all HMSA prescription claims. In addition, our auditor conducts on-site pharmacy audits on our behalf

- **Any Willing Provider: Page 13, Line 5**
This language will remove the employers' and health plan's ability to exclude "unwanted" providers, who do not meet standards of practice, have regulatory concerns, or are likely to offer our members substandard care. This language also will remove the employers' and health plan's ability to manage cost through best pricing via restricted or closed networks. HMSA has employer groups who ask for these types of cost-management and/or business strategies
- **Prohibition of Differential Reimbursement to Pharmacies: Page 13, Lines 20-22**
This language will remove the employers' and health plan's ability to differentially reimburse access-critical pharmacies in rural locations or other pharmacies who may have additional cost-of-business expenses. Examples would be that pharmacies on the neighbor islands have added charges (as compared to their Oahu counterparts) for shipping, charges for hazardous materials, and (ground) delivery
- **Registration for Non-Resident Pharmacies: Page 14, Lines 9-13**
This language may impact drugs obtained by our members through mail order pharmacies, specialty drug pharmacies and the few out-of-state pharmacies who provide medications which are limited to specific pharmacy providers approved by the FDA. An example would be a medication for cystic fibrosis

These are just some of the myriad issues with SB 591 SD2, which HMSA is concerned with. While we understand the desire to have local access to pharmacy services, strict regulation of PBMs would ultimately be counter-productive to the overall effort to reduce health care costs. Thank you for the opportunity to provide testimony. We would respectfully request the Committee sees fit to hold this measure today.

Sincerely,



Jennifer Diesman
Vice President
Government Relations



HAWAII MEDICAL ASSOCIATION

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Tuesday, March 15, 2011, 8:30AM, Conference Room 329

To: COMMITTEE ON HEALTH
Rep. Ryan I. Yamane, Chair
Rep. Dee Morikawa, Vice Chair

From: Hawaii Medical Association
Dr. Morris Mitsunaga, MD, President
Linda Rasmussen, MD, Legislative Co-Chair
Dr. Joseph Zobian, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: SB 591, SD2, RELATING TO PHARMACY BENEFIT MANAGEMENT COMPANIES

Chairs & Committee Members:

The Hawaii Medical Association supports this bill, as the HMA supports the regulation of mainland pharmacy benefit management across the board.

In the past the HMA has submitted legislation that would require health plans to utilize local (Pharmacy and Therapeutics) P&T committees and local pharmacy benefit management. It is important to maintain local access to pharmacy services, especially in rural areas.

This bill addresses a broader philosophy of keeping healthcare local and not exporting important services, services, which once lost, will be very difficult to rebuild. It is a problem that spans the entire healthcare continuum.

Independent community pharmacies provide much-needed access to care to patients in traditionally underserved and rural areas, including seniors and low-income individuals. Independents represent 39% of all retail pharmacies, but represent 52% of all rural retail pharmacies. Over 1,800 independent community pharmacies operate as the only retail pharmacy within their rural community.

This year at a conference in Washington, Senate Appropriations Chairman Daniel Inouye touted the importance of pharmacists practicing in rural areas – one of the reasons for a new pharmacy school at the University of Hawaii at Hilo. **The HMA would like to join Sen. Inouye in supporting rural access to healthcare.**

Thank you for the opportunity to provide this testimony.

OFFICERS

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SECRETARY - THOMAS KOSASA, MD IMMEDIATE PAST PRESIDENT – DR. ROBERT C. MARVIT, MD TREASURER
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March 14, 2011

To: Representative Ryan Yamane and Members of the House Health Committee

Fr: Cynthia Laubacher, Senior Director, State Government Affairs
Medco Health Solutions, Inc.

Re: Senate Bill 591 S.D. 2 – Oppose
Hearing: March 15, 2011 8:30a.m.

On behalf of Medco Health Solutions, Inc., I regret to inform you that we must respectfully oppose Senate Bill 591 relating to regulation of pharmacy benefits and pharmacy audits. Medco is one of the nation's largest pharmacy benefits managers, serving nearly 650,000 residents of Hawaii.

PBMs are Regulated

- PBMs comply with numerous already existing regulatory requirements as third party administrators, preferred provider organizations, utilization review organizations, resident and non-resident pharmacies, etc., where required by law.
- State boards of pharmacy regulate PBM activities including dispensing, labeling, counseling, generic substitutions, controlled substances, etc. In the state of Hawaii, the Medco enterprise holds 37 licenses with the Hawaii Board of Pharmacy.
- Through contracts with health plans and insurers, PBMs are required to comply with the same consumer protection laws and regulations governing utilization review and prior approval, timely claims payment, and dispute resolution systems, among others.

S.B. 591 Increases Costs for Employers, Plans and Consumers

Reporting

- SB 591 requires PBMs to disclose proprietary information. The Federal Trade Commission (FTC) has warned several states that legislation requiring PBM disclosure could increase costs and “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.”

- The Department of Justice and the FTC issued a July 2004 report noting that “states should consider the potential costs and benefits of regulating pharmacy benefit transparency” while pointing out that “vigorous competition in the marketplace for PBMs is more likely to arrive at an optimum level of transparency than regulation of those terms.”
- Legislation requiring public disclosure of private PBM contract terms would increase managed drug spending by \$127 billion over the next decade, according to a 2007 study by PricewaterhouseCoopers.
- PBMs already appropriately address disclosure of financial agreements in their contractual agreements with their clients. Clients also contract for audit rights to verify the accuracy of the disclosed information.

Prohibited Activities

- SB 591 takes choices away from consumers and would force one-size-fits-all copayments. Mail-service pharmacies are able to keep prescription drug costs down because they have greater efficiency and lower overhead costs than independent pharmacies.
- Health plans and employers frequently choose to provide their members and employees with the option of a lower copayment on a 90-day supply of their medications through the use of mail-service pharmacies. This provides significant cost savings, particularly for medications prescribed for chronic conditions.
- Mandates a PBM to contract with any provider that wants to join their pharmacy network, regardless of whether they have committed illegal activities or are not as competitive in service or quality as other pharmacies.
- PBMs build networks of pharmacies to provide consumers convenient access to prescriptions at discounted rates. It is important to have pharmacies compete to be part of the pharmacy network for a particular PBM in order to keep the rising costs of prescription drugs down. Network pharmacies compete on service, convenience, and quality to attract consumers within a particular plan.

For these reasons, Medco must respectfully oppose Senate Bill 591. Please feel free to contact me with any questions. Thank you.



Representative Ryan Yamane, Chair
House Committee on Health

Tuesday, March 15, 2011
State Capitol, Conference Room 329

CVS CAREMARK TESTIMONY
SB 591 SD2 Relating to Pharmacy Benefit Management Companies – IN OPPOSITION

Chair Yamane, Vice Chair Morikawa, and members of the Committee on Health,

My name is Todd Inafuku, testifying on behalf of CVS Caremark Corporation (“CVS Caremark”) in opposition to SB 591 SD2, Relating to Pharmacy Benefit Management Companies.

CVS Caremark is one of the nation’s largest independent providers of health improvement services, touching the lives of millions of health plan participants. As CVS Pharmacy and Longs Drugs in Hawaii, we are the largest employer of licensed pharmacists in the United States with over 25,000 pharmacists.

Caremark, our pharmacy benefit manager (PBM) offers our health plan customers a wide range of health improvement products and services designed to lower the cost and improve the quality of pharmaceutical care delivered to health plan participants. Through our unique healthcare model and clinically-based services, CVS Caremark is able to reduce medication errors, increase adherence with drug therapies, and improve health outcomes. In addition, through the use of cost containment and formulary management tools that Caremark clients utilize, they in turn are able to offer a high-quality, cost effective outpatient drug benefit for their enrollees. CVS Caremark clients include a broad range of highly sophisticated private and public health plan sponsors, including Blue Cross Blue Shield plans, health insurance plans, employers, governments, third-party administrators and Taft-Hartley plans.

CVS Caremark has the following concerns with SB 591 SD2, Relating to Pharmacy Benefit Management Companies:

Disclosure Mandates Undermine Price Competition and Increase Costs

SB 591 SD2 would require a PBM to disclose proprietary contract information to health plan clients. We believe this will adversely impact competition in the marketplace and create a “cookie cutter” approach for PBM contracting, which would ultimately result in higher prescription drug costs for consumers.

The Federal Trade Commission (FTC) has warned several states that legislation requiring PBM disclosure could increase costs and “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.”¹ According to the FTC and the Department of Justice, “vigorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms.”²

Transparency is already available in today’s competitive marketplace. Each PBM client is uniquely situated and some have elected to not request disclosure for business reasons of their own. If a health plan or employer wants certain financial information to make a purchasing decision, CVS Caremark believes that it

¹ FTC letter to Rep. Patrick T. McHenry, U.S. Congress, (July 15, 2005); FTC letter to Assembly Member Greg Aghazarian on California’s AB 1960, (September 3, 2004); see also FTC Letter to Senator James Seward, New York Senate, (March 31, 2009).

² US Federal Trade Commission & US Department of Justice Antitrust Division, “Improving Health Care: A Dose of Competition,” July 2004



should be left to the decision of the PBM client to make it a requirement of their bid and negotiate the terms in their contract with PBMs.

Dictating Private Contract Rights Only Benefits Network Pharmacies While Hurting Consumers

SB 591 SD2 mandates that a PBM be required to allow any willing provider to join their pharmacy network, regardless of whether they have committed illegal activities or are not as competitive in service or quality as other pharmacies.

PBMs build networks of pharmacies to provide consumers convenient access to prescriptions at discounted rates, but must do so while meeting network adequacy requirements. It is important to have pharmacies compete to be part of the pharmacy network for a particular PBM in order to keep the rising costs of prescription drugs down. Network pharmacies compete on service, convenience, and quality to attract consumers within a particular plan. Further, the ability of PBMs to negotiate with pharmacies in the private marketplace without government interference plays a critical role in reducing prescription drug benefit costs to health plans and employers, and ultimately consumers.

CVS Caremark believes that government should not create private contract rights that would hinder the ability of PBM clients to create pharmacy networks that meet their needs while providing health benefits at a lower cost.

In closing, a PBM contracts with very sophisticated purchasers of health care and are required to respond to very specific requirements in a Request for Proposal (RFP) and then must vigorously compete with other PBMs for that business. Ultimately, it is the purchaser of the PBM services who determines what the benefit design will be for its beneficiaries and the PBM that can offer the best value in administering that benefit is the one they hire.

Based on the above concerns, CVS Caremark respectfully request that you hold this measure. Thank you for the opportunity to testify,

Todd K. Inafuku
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Written Testimony Presented Before the
House Committee on Health
March 15, 2011, 8:30 a.m.

Ronald T. Taniguchi, Pharm.D.
Director of Community Partnerships
College of Pharmacy, University of Hawai'i Hilo

Support for SB 591 SD2 Relating to Pharmacy Benefit Management Companies

Chair Yamane, Vice Chair Morikawa, and members of the House Committee on Health:

Thank you for the opportunity to present testimony, as an individual, **in support of SB 591 SD2**. This bill offers protections to pharmacies that provide vital prescription drug and medication therapy management services to rural and underserved communities, particularly on the Neighbor Islands. Pharmacists who live in the communities in which they work provide a safety net to the families they serve that cannot be matched by impersonal long distance alternatives such as mail order prescriptions and call center communications.

Thank you again for the opportunity to testify.